

This letter is to comment regarding your Notice of Proposed Rulemaking narrowing the “advice exception” under the Labor Management Reporting and Disclosure Act. At a time where the President should be working to help America’s businesses stimulate job growth. This proposal does the opposite. If enacted, this proposal will create an unnecessary financial burden to employers who should be focusing on job retention and creation. President Obama has said as much.

Currently any positive employee relation practice provided with assistance of either an attorney or consultant could trigger the Labor Management reporting requirement. The Department’s current interpretation gives a bright line test that is simple and easy to recognize which creates a certainty around the reporting process.

The proposed rule blurs this line making the reporting process confusing and unclear. The list of activities that could trigger the reporting requirement would be essentially limitless and rely on an obscure definition of the “intent” of the company. Worsening the issue is that failure to comply properly with these confusing guidelines creates a potential “criminal liability” from the mere act of engaging the services of a consultant or attorney. Due to the serious potential consequences of improper reporting, companies will have to spend unnecessary time making sure they identify all persuasion and advice activities each year. This diverts resources to satisfying an unclear compliance requirement thereby robbing employers of vital resources better spent on innovation and job creating activities. This is not to mention other business opportunities lost.

The cost of compliance is staggering and would be felt by large and small businesses alike. In creating this proposal, the department is proposing to overstep its regulatory authority and is dramatically underestimated the costs and administration that would be created by this rule. We strongly urge that the proposed rule be withdrawn and that the current, common-sense and bright line interpretation remain in place.